APPENDIX A

Docket No. 18495-04L.

United States Tax Court Washington, DC 20217
MICHELLE LEIGH SELGAS, Petitioner
v.
Commissioner of Internal Revenue, Respondent

This case arises from a petition for judicial review under section 6330[1]. The issue is the propriety of respondent's decision to proceed with collection of income tax against petitioner for the years 1997, 1998, 1999, 2000, and 2001. The parties have filed cross motions for summary judgment pursuant to Rule 121. At the time the petition was filed, petitioner was a legal resident of the State of Texas. A hearing was held on the motions at the Court's trial session at Dallas, Texas.

Summary judgment is intended to expedite litigation and avoid unnecessary and expensive trials. Florida Peach Corn. v. Commissioner, 90 T.C. 678, 681 (1988). Summary judgment may be granted with respect to all or any part of the legal issues in controversy 'if the pleadings, answers to interrogatories, depositions, admissions, and any other acceptable materials, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that a decision may be rendered as a matter of law." Rule 1 2 1 (b) ; Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), affd. 17 F.3d 965 (7th Cir. 1994); Zaentz v. Commissioner, 90 T.C. 753, 754 (1988); Naftel v. Commissioner, 85 T.C. 527, 529 (1985). Petitioner is married. She did not file Federal income tax

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[1] Unless otherwise indicated, all section references are to the Internal Revenue Code, as amended, and all Rule references are to the Tax Court Rules of Practice and Procedure.

returns for the years in question. Respondent issued a notice of deficiency to petitioner for the years 1997, 1998, and 1999, and another notice of deficiency for the years 2000 and 2001. No petition was ever filed with this Court with respect to both notices, nor have any judicial proceedings been instituted by petitioner in any other court. The determined deficiencies and additions to tax and penalties have not been paid and are as follows:

Year	Deficiency	Sec 6651(a)(1)	Sec. 6654
1997	2,381.00	584.25	124.77
1998	1,781.00	445.25	--
1999	1,241.00	310.25	--
2000	12,572.00	3,138.00	670.34
2001	12,293.00	3.067.00	490.15

The determinations by respondent shown above ,were based on substitute returns pursuant to section 6020(b). In due course, petitioner was assessed for the above amounts. This case arises over respondent's actions, pursuant to section 6330, to collect the assessed deficiencies and additions to tax/penalties. After demands on petitioner for payment were not honored, respondent issued a final notice of intent to levy and notice of your right to a hearing. Petitioner requested a hearing timely, which was conducted by telephone between a settlement officer for respondent and petitioner's authorized representative, a certified public accountant. Thereafter, respondent issued a notice of determination concerning collection action(s) under section 6320 and/or 6330. In the notice of determination, petitioner was denied relief on the ground that "you did not raise any issues that were relevant to paying your tax liability. Rather, you had only raised frivolous issues, which we could not address during a collection due process hearing." The notice of determination also states that petitioner was not offered a faceto-face hearing because, based upon the positions taken by her representative at the hearing, a face-to-face hearing would serve no useful purpose. Petitioner's

representative had taken the position that the notices of deficiency were not signed by a duly authorized officer; that a "Code 494" was not posted to petitioner's account with the Internal Revenue Service; that respondent made a "naked assessment" of the deficiencies; that the claimed taxes were paid in full by two checks issued by "Chipdata, Inc."; that petitioner, a housewife, was not gainfully employed during the years in question and was not otherwise engaged in any taxable activity during the years in question; and that respondent failed to state the particular taxing statute under which petitioner is liable, along with the applicable regulations or that she is a "taxpayer". The notice of determination also stated that the computer records of the Internal Revenue Service showed that the tax liabilities were unpaid, and that the claimed payments by Chipdata, Inc., were in fact payments of tax liabilities owing by that corporation and were not payments to be credited to petitioner's account. In summary, the notice of determination concluded that petitioner's claims, voiced through her representative, were frivolous, groundless, irrelevant or without merit, and that any action by petitioner in this Court with these same arguments could subject her to monetary sanctions of up to $25,000.00. Petitioner was denied relief.

In her petition to this Court, petitioner alleged:

> Petitioner's relief sought: (1) A Redetermination to set aside Deficiency (2) All administrative costs, (3) All court costs. Petitioner seeks relief because (1) The alleged tax is fully paid; (2) The evidence in the Administrative record shows: (a) the alleged tax has been paid; (b) the alleged deficiency is based upon a naked assessment as evidenced by the lack of valid supporting documents required to verify and support "Transaction Codes", "Document Codes" and "blocking Codes" listed in the Individual Master File; (c) The administrative

record has been tampered with or the IRS' computer systems still have severe programming bugs; (d) The IRS computer data entry control notices to administer Petitioner's administrative file are non-existent or missing; (e) The Petitioner did not receive a Statutory Notice of Deficiency nor a due process hearing.

A hearing was held on the parties' cross motions for summary judgment. The issues before the Court are:

(1) Whether the notices of deficiency to petitioner are valid;

(2) Whether petitioner was accorded a valid section 6320/6330 due process hearing;

(3) Whether the taxes at issue have been paid; and

(4) Whether substitute returns prepared by the Internal Revenue Service under section 6020(b) are valid.

Where the underlying tax liability is properly at issue, this Court reviews that issue de novo. Goza v. Commissioner, 114 T.C. 176, 181-182 (2000). If the taxpayer did not receive a notice of deficiency, the taxpayer may challenge the underlying tax liability as part of the collection due process appeal. Sego v. Commissioner, 114 T.C. 604, 609 (2000); Goza v. Commissioner, supra. In this situation, this Court reviews the collection due process determinations under an abuse of discretion standard. Sego v. Commissioner, supra. An abuse of discretion is defined as any action that is unreasonable, arbitrary or capricious, clearly unlawful, or lacking sound basis in law, taking into account all the facts and circumstances. Thor Power Tool Co. v. Commissioner, 439 U.S. 522, 532-533 (1979); Swanson v. Commissioner, 121 T.C. 111, 119 (2003).

With respect to the first issue, whether the notices of deficiency are valid, and whether petitioner received such

notices, the Court concludes that petitioner physically received both notices by her own admission in an affidavit filed with the Court dated April 7; 2005, which is attached to her amended petition in which she states: "On or about July 16, 2003, I received two documents purported to be notices of deficiency". Petitioner, therefore, does not dispute physically receiving the notices of deficiency but challenges their legality and validity, alleging that the individual who signed the notices was without authority to do so, and that the Internal Revenue Service records of her taxpayer account do not reflect entry of "Transaction Code 494". Petitioner cites no legal authority to support her position. Respondent contends that Transaction Code 494 was posted to petitioner's account when the notices of deficiency were sent out. As the Court understands, Transaction Code 494 is the entry by respondent on a taxpayer's tax account that reflects the issuance of a notice of deficiency. The parties have cited no statute or cases addressing what rights, if any, are afforded or not afforded to a taxpayer by Transaction Code 494 or its omission. In Wiley v. Commissioner, 20 F.3d 222 (6th Cir. 1994), the Court noted that the transaction code normally records the date the statutory notice was sent. A failure, therefore, for the transaction code to be entered on a taxpayer's account might indicate or show that a notice of deficiency was not sent. The parties have advanced no other rationale for transaction code 494. Petitioner's contention, therefore, is a nonissue because, by affidavit, she acknowledged receiving the two statutory notices. The statutory notices, therefore, "were sent". Petitioner also contended that the notices were invalid because the person who signed the notices had no authority. Case law is very broad as to what constitutes a notice of deficiency. In McGarvie v. Commissioner, T.C. Memo. 1988-85, the Court held that all that is required is that a notice of deficiency provide formal notification that a deficiency in tax has been determined, and that "the Commissioner means to assess him; anything that does this

unequivocally is good enough." Moreover, the Court pointed out in that case that a challenge to the validity of the notice of deficiency is a request for the Court to look behind the notice of deficiency, and the Court will not look behind the notice to examine the evidence used, the propriety of respondent's motives, and the administrative policy or the procedure followed by the Commissioner in the determinations of a notice of deficiency. Moreover, the cases hold that a notice of deficiency is not invalid because it was not signed by the Commissioner or anyone else. Pendola v. Commissioner, 50 T.C. 509 (1968). The Court holds, therefore, that the notices of deficiency issued to petitioner are valid.

Petitioner next contends she was not accorded a valid due process hearing. She voices no objection that her representative was authorized to represent her at the hearing; however, she argues that, on the designated date, the hearing was supposed to be at 1:00 p.m. and, instead, the appeals officer called petitioner's agent by telephone at 10:00 a.m. Petitioner voices objection to this change in the time because she intended to participate in the hearing, and, therefore, she was denied that opportunity. The Court does not view that as an egregious error by respondent. The Court is satisfied that petitioner and her representative could easily have requested a conference that would have allowed petitioner to participate. They did not do that, and, moreover, the Court is satisfied from the positions taken by petitioner before this Court that the outcome of the hearing would have been no different. The Court notes that neither petitioner nor her representative took any affirmative steps to contact the appeals officer thereafter to provide evidence that would have been relevant to the appeal. The Court, therefore, rejects petitioner's argument that her due process hearing was invalid. The Court does not view respondent's actions in this regard as an abuse of discretion. As a result of the issuance of valid notices of

deficiency and the failure of petitioner to petition this Court (or any other Court), petitioner is precluded under section 6330(c) (2) (B) from challenging the existence and amounts of the underlying tax deficiencies.

Petitioner next contends that the tax liabilities have been paid in full by two checks that were issued by a corporation or an entity referred to as Chipdata. This was addressed by the appeals officer who concluded that the claimed payments had been made but not for petitioner's account. Respondent correctly points out that this contention does not relate to the underlying liabilities (which are not at issue here) but relates to the collection of the unpaid tax. As such, the standard of review before this Court is whether there was an abuse of discretion by the appeals officer in arriving at this conclusion. The notice of determination reflects that the appeals officer reviewed all issues regarding the unpaid tax, including the application of payments and credits, and made the determination stated in the notice of determination. Petitioner has not shown or otherwise established an abuse of discretion by the appeals officer in making this conclusion.

Finally, petitioner questions the legality of respondent's authority to prepare substitute returns under section 6020(b).

Section 6020 (b) states:

(1) Authority of secretary to execute return.--If any person fails to make any return required by any internal revenue law or regulation made thereunder at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise. Petitioner did not file income tax returns for the years at issue.

Pursuant to section 6020(b), respondent prepared substitute returns. Those returns were prepared based on information that was made known to the Secretary. Notices of deficiency were issued to petitioner based on the substitute returns. Petitioner never filed a petition in this Court challenging the determinations in those notices. Respondent was authorized by the above Code provision to issue a notice of deficiency. Petitioner's argument, in effect, is an argument challenging the underlying deficiencies, which she is not allowed to do because the notices of deficiency were never challenged in Court. Petitioner's argument on this issue is rejected.

For the afore-stated reasons, it is

ORDERED that respondent's above-referenced motion for summary judgment is granted. It is further

ORDERED that petitioner's above-referenced motion for summary judgment is denied. It is further

ORDERED AND DECIDED that respondent may proceed with the collection action as determined in the notice of determination concerning collection action for the taxable years 1997, 1998, 1999, 2000, and 2001.

D. Irvin Couvillion
Special Trial Judge

ENTERED: SEP 20, 2005

APPENDIX B

No. 05-61185

United States Court of Appeals,
Fifth Circuit.

MICHELLE LEIGH SELGAS,
Petitioner - Appellant,
versus
COMMISSIONER OF INTERNAL REVENUE,
Respondent - Appellee.

Appeal from the United States Tax Court
NO. 18495-04

Before JOLLY, HIGGINBOTHAM, and DENNIS, Circuit Judges.

PER CURIAM:*

AFFIRMED. see 5th CIR. R. 47.6.

FILED: December 11, 2006

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* Pursuant to 5th CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th CIR. R. 47.5.4.

APPENDIX C

No. 05-61185

United States Court of Appeals,
Fifth Circuit.

MICHELLE LEIGH SELGAS,
Petitioner - Appellant,
versus
COMMISSIONER OF INTERNAL REVENUE,
Respondent - Appellee.

Petition for Review of an Order of the
Internal Revenue Service (Tax Ct)

ON PETITION FOR REHEARING

Before JOLLY, HIGGINBOTHAM, and DENNIS, Circuit Judges.
PER CURIAM:

IT IS ORDERED that the petition for rehearing is denied

ENTERED FOR THE COURT:

Patt Higginbotham
United States Circuit Judge

FILED: January 23, 2007

APPENDIX D

The Internal Revenue Service Restructuring and Reform Act of 1998, Title III, Subtitle E, Part I; Pub. L. 105-206, 105th Cong., 2d Sess., 112 STAT. 685, 746-750

PART I—DUE PROCESS

SEC. 3401. DUE PROCESS IN INTERNAL REVENUE SERVICE COLLECTION ACTIONS.

(a) NOTICE AND OPPORTUNITY FOR HEARING UPON FILING OF

NOTICE OF LIEN.—Subchapter C of chapter 64 (relating to lien for taxes) is amended by inserting before the table of sections the following:

"Part I. Due process for liens.

"Part II. Liens.

"PART I—DUE PROCESS FOR LIENS

"Sec. 6320. Notice and opportunity for hearing upon filing of notice of lien.

"SEC. 6320. NOTICE AND OPPORTUNITY FOR HEARING UPON FILING

OF NOTICE OF LIEN.

"(a) REQUIREMENT OF NOTICE.—

"(1) IN GENERAL.—The Secretary shall notify in writing the person described in section 6321 of the filing of a notice of lien under section 6323.

"(2) TIME AND METHOD FOR NOTICE.—The notice required under paragraph (1) shall be—

"(A) given in person;

"(B) left at the dwelling or usual place of business of such person; or

"(C) sent by certified or registered mail to such person's last known address, not more than 5 business days after the day of the filing of the notice of lien.

"(3) INFORMATION INCLUDED WITH NOTICE.—The notice required under paragraph (1) shall include in simple and nontechnical terms—

"(A) the amount of unpaid tax;

"(B) the right of the person to request a hearing during the 30-day period beginning on the day after the 5-day period described in paragraph (2);

"(C) the administrative appeals available to the taxpayer with respect to such lien and the procedures relating to such appeals; and

"(D) the provisions of this title and procedures relating to the release of liens on property.

"(b) RIGHT TO FAIR HEARING.—

"(1) IN GENERAL.—If the person requests a hearing under subsection (a)(3)(B), such hearing shall be held by the Internal Revenue Service Office of Appeals.

"(2) ONE HEARING PER PERIOD.—A person shall be entitled to only one hearing under this section with respect to the taxable period to which the unpaid tax specified in subsection

(a)(3)(A) relates.

"(3) IMPARTIAL OFFICER.—The hearing under this subsection shall be conducted by an officer or employee who has had no prior involvement with respect to the unpaid tax specified in subsection (a)(3)(A) before the first hearing under this section or section 6330. A taxpayer may waive the requirement of this paragraph.

"(4) COORDINATION WITH SECTION 6330.—To the extent practicable, a hearing under this section shall be held in conjunction with a hearing under section 6330.

"(c) CONDUCT OF HEARING; REVIEW; SUSPENSIONS.—For purposes of this section, subsections (c), (d) (other than paragraph (2)(B) thereof), and (e) of section 6330 shall apply.

"PART II—LIENS".

(b) NOTICE AND OPPORTUNITY FOR HEARING BEFORE LEVY.—

Subchapter D of chapter 64 (relating to seizure of property for collection of taxes) is amended by inserting before the table of sections the following:

"Part I. Due process for collections.

"Part II. Levy.

"PART I—DUE PROCESS FOR COLLECTIONS

"Sec. 6330. Notice and opportunity for hearing before levy.

"SEC. 6330. NOTICE AND OPPORTUNITY FOR HEARING BEFORE LEVY.

"(a) REQUIREMENT OF NOTICE BEFORE LEVY.—

"(1) IN GENERAL.—No levy may be made on any property or right to property of any person unless the Secretary has notified such person in writing of their right to a hearing under this section before such levy is made. Such notice shall be required only once for the taxable period to which the unpaid tax specified in paragraph (3)(A) relates.

"(2) TIME AND METHOD FOR NOTICE.—The notice required under paragraph (1) shall be—

"(A) given in person;

"(B) left at the dwelling or usual place of business of such person; or

"(C) sent by certified or registered mail, return receipt requested, to such person's last known address; not less than 30 days before the day of the first levy with respect to the amount of the unpaid tax for the taxable period.

"(3) INFORMATION INCLUDED WITH NOTICE.—The notice required under paragraph (1) shall include in simple and nontechnical terms—

"(A) the amount of unpaid tax;

"(B) the right of the person to request a hearing during the 30-day period under paragraph (2); and

"(C) the proposed action by the Secretary and the rights of the person with respect to such action, including a brief statement which sets forth—

"(i) the provisions of this title relating to levy and sale of property;

"(ii) the procedures applicable to the levy and sale of property under this title;

"(iii) the administrative appeals available to the taxpayer with respect to such levy and sale and the procedures relating to such appeals;

"(iv) the alternatives available to taxpayers which could prevent levy on property (including installment agreements under section 6159); and

"(v) the provisions of this title and procedures relating to redemption of property and release of liens on property.

"(b) RIGHT TO FAIR HEARING.—

"(1) IN GENERAL.—If the person requests a hearing under subsection (a)(3)(B), such hearing shall be held by the Internal Revenue Service Office of Appeals.

"(2) ONE HEARING PER PERIOD.—A person shall be entitled to only one hearing under this section with respect to the taxable period to which the unpaid tax specified in subsection

(a)(3)(A) relates.

"(3) IMPARTIAL OFFICER.—The hearing under this subsection shall be conducted by an officer or employee who has had no prior involvement with respect to the unpaid tax specified in subsection (a)(3)(A) before the first hearing under this section or section 6320. A taxpayer may waive the requirement of this paragraph.

"(c) MATTERS CONSIDERED AT HEARING.—In the case of any hearing conducted under this section—

"(1) REQUIREMENT OF INVESTIGATION.—The appeals officer shall at the hearing obtain verification from the Secretary that the requirements of any applicable law or administrative procedure have been met.

"(2) ISSUES AT HEARING.—

"(A) IN GENERAL.—The person may raise at the hearing any relevant issue relating to the unpaid tax or the proposed levy, including—

"(i) appropriate spousal defenses;

"(ii) challenges to the appropriateness of collection actions; and

"(iii) offers of collection alternatives, which may include the posting of a bond, the substitution of other assets, an installment agreement, or an offer-in-compromise.

"(B) UNDERLYING LIABILITY.—The person may also raise at the hearing challenges to the existence or amount of the underlying tax liability for any tax period if the person did not receive any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability.

"(3) BASIS FOR THE DETERMINATION.—The determination by an appeals officer under this subsection shall take into consideration—

"(A) the verification presented under paragraph (1);

"(B) the issues raised under paragraph (2); and

"(C) whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the person that any collection action be no more intrusive than necessary.

"(4) CERTAIN ISSUES PRECLUDED.—An issue may not be raised at the hearing if—

"(A) the issue was raised and considered at a previous hearing under section 6320 or in any other previous administrative or judicial proceeding; and

"(B) the person seeking to raise the issue participated meaningfully in such hearing or proceeding. This paragraph shall not apply to any issue with respect to which subsection (d)(2)(B) applies.

"(d) PROCEEDING AFTER HEARING.—

"(1) JUDICIAL REVIEW OF DETERMINATION.—The person may, within 30 days of a determination under this section, appeal such determination—

"(A) to the Tax Court (and the Tax Court shall have jurisdiction to hear such matter); or

"(B) if the Tax Court does not have jurisdiction of the underlying tax liability, to a district court of the United States. If a court determines that the appeal was to an incorrect court, a person shall have 30 days after the court determination to file such appeal with the correct court.

"(2) JURISDICTION RETAINED AT IRS OFFICE OF APPEALS.—

The Internal Revenue Service Office of Appeals shall retain jurisdiction with respect to any determination made under this section, including subsequent hearings requested by the person who requested the original hearing on issues regarding—

"(A) collection actions taken or proposed with respect to such determination; and

"(B) after the person has exhausted all administrative remedies, a change in circumstances with respect to such person which affects such determination.

"(e) SUSPENSION OF COLLECTIONS AND STATUTE OF LIMITATIONS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), if a hearing is requested under subsection (a)(3)(B), the levy actions which are the subject of the requested hearing and the running of any period of limitations under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), or section 6532 (relating to other suits) shall be suspended for the period during which such hearing, and appeals therein, are pending. In no event shall any such period expire before the 90th day after the day on which there is a final determination in such hearing.

"(2) LEVY UPON APPEAL.—Paragraph (1) shall not apply to a levy action while an appeal is pending if the underlying tax liability is not at issue in the appeal and the court determines that the Secretary has shown good cause not to suspend

the levy.

"(f) JEOPARDY AND STATE REFUND COLLECTION.—If—

"(1) the Secretary has made a finding under the last sentence of section 6331(a) that the collection of tax is in jeopardy; or

"(2) the Secretary has served a levy on a State to collect a Federal tax liability from a State tax refund, this section shall not apply, except that the taxpayer shall be given the opportunity for the hearing described in this section within a reasonable period of time after the levy.

"PART II—LEVY".

(c) REVIEW BY SPECIAL TRIAL JUDGES ALLOWED.—

(1) IN GENERAL.—Section 7443(b) (relating to proceedings which may be assigned to special trial judges) is amended by striking "and" at the end of paragraph (3), by redesignating paragraph (4) as paragraph (5), and by inserting after paragraph

(3) the following new paragraph:

"(4) any proceeding under section 6320 or 6330, and".

(2) AUTHORITY TO MAKE DECISIONS.—Section 7443(c) (relating to authority to make court decisions) is amended by striking "or (3)" and inserting "(3), or (4)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to collection actions initiated after the date which is 180 days after the date of the enactment of this Act.

APPENDIX E

INTERNAL REVENUE CODE SECTIONS: 6020, 6065, 6201, 6211, 6212, 7701(a)(11)-(12)

CHAPTER 61 - INFORMATION AND RETURNS

Subchapter A - Returns and Records

PART II - TAX RETURNS OR STATEMENTS

Subpart D - Miscellaneous Provisions

****

§6020. Returns prepared for or executed by Secretary

(a) Preparation of return by Secretary

If any person shall fail to make a return required by this titleor by regulations prescribed thereunder, but shall consent to disclose all information necessary for the preparation thereof, then, and in that case, the Secretary may prepare such return, which, being signed by such person, may be received by the Secretary as the return of such person.

(b) Execution of return by Secretary

(1) Authority of Secretary to execute return

If any person fails to make any return required by any internal revenue law or regulation made thereunder at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.

(2) Status of returns

Any return so made and subscribed by the Secretary shall be prima facie good and sufficient for all legal purposes.

PART IV - SIGNING AND VERIFYING OF RETURNS AND OTHER DOCUMENTS

§6065. Verification of returns

Except as otherwise provided by the Secretary, any return, declaration, statement, or other document

required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under the penalties of perjury.

CHAPTER 63 - ASSESSMENT

Subchapter A - In General

****

§6201. Assessment authority

(a) Authority of Secretary

The Secretary is authorized and required to make the inquiries, determinations, and assessments of all taxes (including interest, additional amounts, additions to the tax, and assessable penalties) imposed by this title, or accruing under any former internal revenue law, which have not been duly paid by stamp at the time and in the manner provided by law. Such authority shall extend to and include the following:

(1) Taxes shown on return

The Secretary shall assess all taxes determined by the taxpayer or by the Secretary as to which returns or lists are made under this title.

(2) Unpaid taxes payable by stamp

(A) Omitted stamps

Whenever any article upon which a tax is required to be paid by means of a stamp is sold or removed for sale or use by the manufacturer thereof or whenever any transaction or act upon which a tax is required to be paid by means of a stamp occurs without the use of the proper stamp, it shall be the duty of the Secretary, upon such information as he can obtain, to estimate the amount of tax which has been omitted to be paid and to make assessment therefor upon the person or persons the Secretary determines to be liable for such tax.

(B) Check or money order not duly paid

In any case in which a check or money order received under authority of section 6311 as payment for stamps is not duly paid, the unpaid amount may be immediately assessed as if it were a tax imposed by this title, due at the time of such receipt, from the person who tendered such check or money order.

(3) Erroneous income tax prepayment credits

If on any return or claim for refund of income taxes under subtitle A there is an overstatement of the credit for income tax withheld at the source, or of the amount paid as estimated income tax, the amount so overstated which is allowed against the tax shown on the return or which is allowed as a credit or refund may be assessed by the Secretary in the same manner as in the case of a mathematical or clerical error appearing upon the return, except that the provisions of section 6213(b)(2) (relating to abatement of mathematical or clerical error assessments) shall not apply with regard to any assessment under this paragraph.

(b) Amount not to be assessed

(1) Estimated income tax

No unpaid amount of estimated income tax required to be paid under section 6654 or 6655 shall be assessed.

(2) Federal unemployment tax

No unpaid amount of Federal unemployment tax for any calendar quarter or other period of a calendar year, computed as provided in section 6157, shall be assessed.

(c) Compensation of child

Any income tax under chapter 1 assessed against a child, to the extent attributable to amounts includible in the gross income of the child, and not of the parent, solely by reason of section73(a), shall, if not paid by the child, for all purposes be considered as having also been properly assessed against the parent.

(d) Required reasonable verification of information returns

In any court proceeding, if a taxpayer asserts a reasonable dispute with respect to any item of income reported on an information return filed with the Secretary under subpart B or C of part III of subchapter A of chapter 61 by a third party and the taxpayer has fully cooperated with the Secretary (including providing, within a reasonable period of time, access to and inspection of all witnesses, information, and documents within the control of the taxpayer as reasonably requested by the Secretary), the Secretary shall have the burden of producing reasonable and probative information concerning such deficiency in addition to such information return.

(e) Deficiency proceedings

For special rules applicable to deficiencies of income, estate, gift, and certain excise taxes, see subchapter B.

Subchapter B - Deficiency Procedures in the Case of Income, Estate, Gift, and Certain Excise Taxes

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§6211. Definition of a deficiency

(a) In general

For purposes of this title in the case of income, estate, and gift taxes imposed by subtitles A and B and excise taxes imposed by chapters 41, 42, 43, and 44 the term "deficiency" means the amount by which the tax imposed by subtitle A or B, or chapter 41, 42, 43, or 44 exceeds the excess of -

(1) the sum of

(A) the amount shown as the tax by the taxpayer upon his return, if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus

(B) the amounts previously assessed (or collected without assessment) as a deficiency, over -

(2) the amount of rebates, as defined in subsection (b)(2), made.

(b) Rules for application of subsection (a)

For purposes of this section -

(1) The tax imposed by subtitle A and the tax shown on the return shall both be determined without regard to payments on account of estimated tax, without regard to the credit under section 31, without regard to the credit under section 33, and without regard to any credits resulting from the collection of amounts assessed under section 6851 or 6852 (relating to termination assessments).

(2) The term "rebate" means so much of an abatement, credit, refund, or other repayment, as was made on the ground that the tax imposed by subtitle A or B or chapter 41, 42, 43, or 44 was less than the excess of the amount specified in subsection (a)(1) over the rebates previously made.

(3) The computation by the Secretary, pursuant to section 6014, of the tax imposed by chapter 1 shall be considered as having been made by the taxpayer and the tax so computed considered as shown by the taxpayer upon his return.

(4) For purposes of subsection (a) -

(A) any excess of the sum of the credits allowable under sections 24(d), 32, and 34 over the tax imposed by subtitle A (determined without regard to such credits), and

(B) any excess of the sum of such credits as shown by the taxpayer on his return over the amount shown as the tax by the taxpayer on such return (determined without regard to such credits), shall be taken into account as negative amounts of tax.

(c) Coordination with subchapters C and D

In determining the amount of any deficiency for purposes of this subchapter, adjustments to partnership items shall be made only as provided in subchapters C and D.

§6212. Notice of deficiency

(a) In general

If the Secretary determines that there is a deficiency in respect of any tax imposed by subtitles A or B or chapter 41, 42, 43, or 44 he is authorized to send notice of such deficiency to the taxpayer by certified mail or registered mail. Such notice shall include a notice to the taxpayer of the taxpayer's right to contact a local office of the taxpayer advocate and the location and phone number of the appropriate office.

(b) Address for notice of deficiency

(1) Income and gift taxes and certain excise taxes

In the absence of notice to the Secretary under section 6903 of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by subtitle A, chapter 12, chapter 41, chapter 42, chapter 43, or chapter 44 if mailed to the taxpayer at his last known address, shall be sufficient for purposes of subtitle A, chapter 12, chapter 41, chapter 42, chapter 43, chapter 44, and this chapter even if such taxpayer is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

(2) Joint income tax return

In the case of a joint income tax return filed by husband and wife, such notice of deficiency may be a single joint notice, except that if the Secretary has been notified by either spouse that separate residences have been established, then, in lieu of the single joint notice, a duplicate original of the joint notice shall be sent by certified mail or registered mail to each spouse at his last known address.

(3) Estate tax

In the absence of notice to the Secretary under section 6903 of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by chapter 11, if addressed in the name of the decedent or other person subject to liability and mailed to his last

known address, shall be sufficient for purposes of chapter 11 and of this chapter.

(c) Further deficiency letters restricted

(1) General rule

If the Secretary has mailed to the taxpayer a notice of deficiency as provided in subsection (a), and the taxpayer files a petition with the Tax Court within the time prescribed in section 6213(a), the Secretary shall have no right to determine any additional deficiency of income tax for the same taxable year, of gift tax for the same calendar year, of estate tax in respect of the taxable estate of the same decedent, of chapter 41 tax for the same taxable year, of chapter 43 tax for the same taxable year, of chapter 44 tax for the same taxable year, of section 4940 tax for the same taxable year, or of chapter 42 tax, (other than under section 4940) with respect to any act (or failure to act) to which such petition relates, except in the case of fraud, and except as provided in section 6214(a) (relating to assertion of greater deficiencies before the Tax Court), in section 6213(b)(1) (relating to mathematical or clerical errors), in section 6851 or 6852 (relating to termination assessments), or in section 6861(c) (relating to the making of jeopardy assessments).

(2) Cross references

For assessment as a deficiency notwithstanding the prohibition of further deficiency letters, in the case of -

(A) Deficiency attributable to change of treatment with respect to itemized deductions, see section 63(e)(3).

(B) Deficiency attributable to gain on involuntary conversion, see section 1033(a)(2)(C) and (D).

(C) Deficiency attributable to activities not engaged in for profit, see section 183(e)(4). For provisions allowing determination of tax in title 11 cases, see section 505(a) of title 11 of the United States Code.

(d) Authority to rescind notice of deficiency with taxpayer's consent The Secretary may, with the consent of the taxpayer, rescind any notice of deficiency mailed to

the taxpayer. Any notice so rescinded shall not be treated as a notice of deficiency for purposes of subsection (c)(1) (relating to further deficiency letters restricted), section 6213(a) (relating to restrictions applicable to deficiencies; petition to Tax Court), and section 6512(a) (relating to limitations in case of petition to Tax Court), and the taxpayer shall have no right to file a petition with the Tax Court based on such notice. Nothing in this subsection shall affect any suspension of the running of any period of limitations during any period during which the rescinded notice was outstanding.

Subtitle F - Procedure and Administration
CHAPTER 79 - DEFINITIONS
****

§7701. Definitions
(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof -

(11) Secretary of the Treasury and Secretary

(A) Secretary of the Treasury

The term "Secretary of the Treasury" means the Secretary of the Treasury, personally, and shall not include any delegate of his.

(B) Secretary

The term "Secretary" means the Secretary of the Treasury or his delegate.

(12) Delegate

(A) In general

The term "or his delegate" -

(i) when used with reference to the Secretary of the Treasury, means any officer, employee, or agency of the Treasury Department duly authorized by the Secretary of the Treasury directly, or indirectly by one or more redelegations of authority, to perform the function mentioned or described in the context; and

(ii) when used with reference to any other official of the United States, shall be similarly construed.

APPENDIX F

Selected FOIA Responses from the
Secretary's Disclosure Office

RESPONSE: To request for the 1997 purported returns made by the Secretary for the Petitioner:

Dear Ms. Selgas:

> ... In checking our records, we found no responsive documents pertaining to your request seeking a Form 1040A/1040 that was received on August 10.2002 for the 1997 tax year.
>
> Please find enclosed Notice 393 explaining your appeal rights. If you have any questions, please call Jennifer Dotson, Disclosure Assistant, badge number 62-09784 at (615) 250-5166. Our office is located at 801 Broadway, MDP 44, Nashville, TN 37203. Your case number is 62-2005-01442.
>
> Sincerely,
>
> Tim D. Christian
> Badge Number 62-09241
> Nashville Disclosure Officer
> Governmental Liaison and Disclosure

RESPONSE: To request for the 1997 purported amended returns made by the Secretary for the Petitioner:

Dear Ms. Selgas:

> ... In checking our records, we found no responsive documents pertaining to your request seeking a Form 1040X for the 1997 tax year. Please find enclosed Notice 393 explaining your appeal rights.
>
> If you have any questions, please call Jennifer Dotson, Disclosure Assistant, badge number 62-09784 at (615) 250-5166. Our office is located at 801 Broadway, MDP 44, Nashville, TN 37203. Your case number is 62-2005-01443.

Sincerely,

Tim D. Christian
Badge Number 62-09241
Nashville Disclosure Officer
Governmental Liaison and Disclosure

RESPONSE: To request for the 1998 purported returns made by the Secretary for the Petitioner:

Dear Ms. Selgas:

... In checking our records, we found no responsive documents pertaining to your request seeking a Form 1040/1040A that was received on August 10, 2002 for the 1998 tax year. Please find enclosed Notice 393 explaining your appeal rights.

If you have any questions, please call Jennifer Dotson, Disclosure Assistant, badge number 62-09784 at (615) 250-5166. Our office is located at 801 Broadway, MDP 44, Nashville, TN 37203. Your case number is 62-2005-01451.

Sincerely,

Tim D. Christian
Badge Number 62-09241
Nashville Disclosure Officer
Governmental Liaison and Disclosure

RESPONSE: To request for the 1998 purported amended returns made by the Secretary for the Petitioner:

Dear Ms. Selgas:

... In checking our records, we found no responsive documents pertaining to your request seeking a Form 1040X for the 1998 tax year. Please find enclosed Notice 393 explaining your appeal rights.

If you have any questions, please call Jennifer Dotson, Disclosure Assistant, badge number 62-09784 at (615)

250-5166. Our office is located at 801 Broadway, MDP 44, Nashville, TN 37203. Your case number is 62-2005-01444.

Sincerely,

Tim D. Christian
Badge Number 62-09241
Nashville Disclosure Officer
Governmental Liaison and Disclosure

RESPONSE: To request for the 1999 purported returns made by the Secretary for the Petitioner:

Dear Ms. Selgas:

... In checking our records, we found no responsive documents pertaining to your request seeking a Form 1040/1040A that was received on August 10, 2002 for the 1999 tax year. Please find enclosed Notice 393 explaining your appeal rights.

If you have any questions, please call Jennifer Dotson, Disclosure Assistant, badge number 62-09784 at (615) 250-5166. Our office is located at 801 Broadway, MDP 44, Nashville, TN 37203. Your case number is 62-2005-01450.

Sincerely,

Tim D. Christian
Badge Number 62-09241
Nashville Disclosure Officer
Governmental Liaison and Disclosure

RESPONSE: To request for the 1999 purported amended returns made by the Secretary for the Petitioner:

Dear Ms. Selgas:

... In checking our records, we found no responsive documents pertaining to your request seeking a Form

1040X for the 1999 tax year. Please find enclosed Notice 393 explaining your appeal rights.

If you have any questions, please call Jennifer Dotson, Disclosure Assistant, badge number 62-09784 at (615) 250-5166. Our office is located at 801 Broadway, MDP 44, Nashville, TN 37203. Your case number is 62-2005-01445.

Sincerely,

Tim D. Christian
Badge Number 62-09241
Nashville Disclosure Officer
Governmental Liaison and Disclosure

RESPONSE: To request for the 2000 purported returns made by the Secretary for the Petitioner:

Dear Ms. Selgas:

... In checking our records, we found no responsive documents pertaining to your request seeking a Form 1040A/1040 that was received on August 10,2002 for the 2000 tax year. Please find enclosed Notice 393 explaining your appeal rights.

If you have any questions, please call Jennifer Dotson, Disclosure Assistant, badge number 62-09784 at (615) 250-5166. Our office is located at 801 Broadway, MDP 44, Nashville, TN 37203. Your case number is 62-2005-01448.

Sincerely,

Tim D. Christian
Badge Number 62-09241
Nashville Disclosure Officer
Governmental Liaison and Disclosure

RESPONSE: To request for the 2000 purported amended returns made by the Secretary for the Petitioner:

Dear Ms. Selgas:

... In checking our records, we found no responsive documents pertaining to your request seeking a Form 1040X for the 2000 tax year. Please find enclosed Notice 393 explaining your appeal rights.

If you have any questions, please call Jennifer Dotson, Disclosure Assistant, badge number 62-09784 at (615) 250-5166. Our office is located at 801

Broadway, MDP 44, Nashville, TN 37203. Your case number is 62-2005-01446.

Sincerely,

Tim D. Christian
Badge Number 62-09241
Nashville Disclosure Officer
Governmental Liaison and Disclosure

RESPONSE: To request for the 2001 purported returns made by the Secretary for the Petitioner:

Dear Ms. Selgas:

... In checking our records, we found no responsive documents pertaining to your request seeking a Form 1040A/1040 that was received on August 10,2002 for the 2001 tax year. Please find enclosed Notice 393 explaining your appeal rights.

If you have any questions, please call Jennifer Dotson, Disclosure Assistant, badge number 62-09784 at (615) 250-5166. Our office is located at 801 Broadway, MDP 44, Nashville, TN 37203. Your case number is 62-2005-01449

Sincerely,

Tim D. Christian
Badge Number 62-09241
Nashville Disclosure Officer
Governmental Liaison and Disclosure

RESPONSE: To request for the 2001 purported amended returns made by the Secretary for the Petitioner:

Dear Ms. Selgas:

> ... In checking our records, we found no responsive documents pertaining to your request seeking a Form 1040X for the 2001 tax year. Please find enclosed Notice 393 explaining your appeal rights.
>
> If you have any questions, please call Jennifer Dotson, Disclosure Assistant, badge number 62-09784 at (615) 250-5166. Our office is located at 801 Broadway, MDP 44, Nashville, TN 37203. Your case number is 62-2005-01447.
>
> Sincerely,
>
> Tim D. Christian
> Badge Number 62-09241
> Nashville Disclosure Officer
> Governmental Liaison and Disclosure